

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	Lachelt et al.	Patent Application	
Serial No.:	10/780,516	Group Art Unit:	2456
Filed:	February 17, 2004	Examiner:	Keehn, R.

For: JOURNALING PROXY IN ACTIVATION SOLUTION

Appeal Brief

Table of Contents

	<u>Page</u>
Real Party in Interest	2
Related Appeals and Interferences	3
Status of Claims	4
Status of Amendments	5
Summary of Claimed Subject Matter	6
Grounds of Rejection to be Reviewed on Appeal	8
Arguments	9
Conclusion	20
Appendix - Clean Copy of Claims on Appeal	21
Appendix – Evidence Appendix	27
Appendix – Related Proceedings Appendix	28

I. Real Party in Interest

The assignee of the present embodiments is Hewlett-Packard Development Company.

II. Related Appeals and Interferences

There are no related appeals or interferences known to the Appellants.

III. Status of Claims

Claims 1-27 remain pending. Claims 1-27 are rejected. This Appeal involves Claims 1-27.

IV. Status of Amendments

All proposed amendments have been entered. An amendment subsequent to the Final Action has not been filed.

V. Summary of Claimed Subject Matter

Claim 1 recites a method of activating a plurality of target elements in a computing arrangement (Fig. 3 and 4 and paragraph 0007). The method includes receiving a high-level activation request pertaining to the plurality of target elements (402 of Fig. 4 and paragraph 0040). The method also includes parsing the high-level activation request into a plurality of atomic requests (404 of Fig. 4 and paragraph 0040). The method further includes receiving at time t1 a first atomic request of the plurality of atomic requests at a first journaling proxy, the first journaling proxy being associated with a first target element of said plurality of target elements and the first journaling proxy intentionally delaying sending the first atomic request to the first target element for execution until a time t2 that satisfies a set of predefined configuration parameters for the first target element (paragraph 0008).

Claim 12 recites an arrangement for activating a target element (paragraph 0008). The arrangement includes an activation engine. The arrangement further includes a journaling proxy coupled to the activation engine and the target element, the journaling proxy being configured to receive an atomic request from the activation engine at time t1, the journaling proxy intentionally delaying sending the atomic request to said target element for execution until a time t2 that satisfies a set of predefined configuration parameters for said target element (paragraph 0008).

Claim 20 recites an article of manufacture including a program storage medium having computer readable code embodied therein, the computer readable code being configured to activate a target element in a computing arrangement (paragraph 0009). The computer readable code is for receiving an atomic request at a journaling proxy from an activation engine (paragraph 0009). The computer readable code is also for intentionally delaying execution of the atomic request by said target element until a time that satisfies a set of predefined configuration parameters for the target element (paragraph 0009).

VI. Grounds of Rejection to be Reviewed on Appeal

1. Claims 1-27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Refai et al. (US 2004/0139193), hereinafter referred to as “Refai,” in view of Klos et al. (US 2004/0022379), hereinafter referred to as “Klos,” and Rockwell Automation’s Non-Patent Literature publication 1785-6.1, hereinafter referred to as “Rockwell.”

VII. Arguments

1. Whether Claims 1-27 are patentable over Refai in view of Klos and Rockwell.

The instant Office Action states that Claims 1-27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Refai in view of Klos and Rockwell. Appellants respectfully submit that the embodiments of the present invention as recited in Claims 1-27 are patentable over Refai in view of Klos and Rockwell for at least the following rationale.

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)). Appellants note that “[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art” (emphasis added; MPEP 2141(III)).

Appellants respectfully note that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Moreover, Appellants note that “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious” (emphasis added) (MPEP 2143.01; *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Moreover, “[i]f the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed amendment” (emphasis added) (MPEP 2143.01; *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

Claim 1 recites an embodiment of the present invention (emphasis added):

A method of activating a plurality of target elements in a computing arrangement, comprising:
receiving a high-level activation request pertaining to said plurality of target elements;
parsing said high-level activation request into a plurality of atomic requests; and
receiving at time t1 a first atomic request of said plurality of atomic requests at a first journaling proxy, said first journaling proxy being associated with a first target element of said plurality of target elements, said first journaling proxy intentionally delaying sending said first atomic request to said first target element for execution until a time t2 that satisfies a set of predefined configuration parameters for said first target element.

Independent Claims 12 and 20 recite similar language. Claims 2-11 that depend from Claim 1, Claims 13-19 that depend from Claim 12 and Claims 21-27 that depend from Claim 20 also include these embodiments.

Appellants respectfully submit that Refai modified by Klos changes the principal of operation of Refai. Appellants understand the principal of operation of Refai to be a “programmable configuration management framework...” that “...makes use of a store for retrievably storing a plurality of programmable configuration requests.” Additionally, “[a] work management module...services the indentified programmable configuration requests causing a corresponding plurality of configuration commands to be issued for monitored execution to a plurality of communication network target entities” (emphasis added; paragraph [0019]).

In particular, “[u]sing the generic programmable configuration management module 306, a programmable configuration request may be created 310.” A “Programmable Change Request (PCR) is a record specifying details of a configuration management job to be performed on a large group of communications network equipment. A PCR typically specifies a list of target equipment to be configured, a configuration job, and scheduling information to perform the configuration job” (emphasis added; paragraph [0043]).

In contrast to the principal operation of Refai, Appellants understand Klos to not teach, describe or suggest a “programmable configuration management framework...” that “....makes use of a store for retrievably storing a plurality of programmable configuration requests.” Rather, Appellants understand Klos to teach a “[a] service management system...which accepts requests for communications services from service order sources” (abstract). In particular, “[d]ue to the need to update the NEs at different times in accordance with the requested activity, and the need to send separate messages to each NE, the ability to generate multiple service activation requests with GOM 400 is needed. Each service activation request contains the appropriate information to provision the NE” (emphasis added, paragraph [0832]). It is noted that “NE” is defined as a Network Element and “GOM” is defined as Generic Order Management, as described in paragraph 0007.

Appellants agree with the instant Office Action which asserts that Refai does “not explicitly disclose...an invention substantially as claimed, including activation request” (emphasis added; page 6, paragraph 2). As described above, Refai teaches a “configuration management framework” that only configures target entities, such as software and hardware, and does not activate any target entities. Therefore, the suggested combination of Refai in view of Klos would change the principal of operation of Refai which is a configuration management framework that does not activate any target elements to a service management system that provides activation requests that activates target entities.

Moreover, the instant Office Action asserts that “mere configuration without operation would be a useless invention” (page 3, paragraph 5). Appellants respectfully disagree. Appellants respectfully submit that an invention directed towards configuration is quite useful regardless of possible subsequent operation and/or activation. An invention directed towards configuration is just that an invention directed towards configuration. Any possible subsequent operation of the configuration whether by an activation request or no activation request does not render the invention useless.

Additionally, the instant Office Action asserts that the “Refai et al. would not lose its configuration management function” (page 3, paragraph 5). Appellants respectfully submit that Refai modified by Klos changes the principal of operation of Refai, as stated above, regardless of whether or not Refai might possibly lose its configuration management function. The losing of configuration management function is a distinctly different issue than changing the principle of operation.

Moreover, Appellants respectfully submit that Refai in view of Klos renders Refai unsatisfactory for its intended purpose. For at least the same remarks as stated above, Appellants understand the intended purpose of Refai to be a “programmable configuration management framework...” that “....makes use of a store for retrievably storing a plurality of programmable configuration requests.” Additionally, “[a] work management module...services the identified programmable configuration requests causing a corresponding plurality of

configuration commands to be issued for monitored execution to a plurality of communication network target entities” (emphasis added; paragraph [0019]).

In contrast, Appellants understand Klos to teach a “[a] service management system...which accepts requests for communications services from service order sources” (abstract). In particular, “[d]ue to the need to update the NEs at different times in accordance with the requested activity, and the need to send separate messages to each NE, the ability to generate multiple service activation requests with GOM 400 is needed. Each service activation request contains the appropriate information to provision the NE” (emphasis added, paragraph [0832]). It is noted that “NE” is defined as a Network Element and “GOM” is defined as Generic Order Management, as described in paragraph [0007].

Appellants agree with the instant Office Action which asserts that Refai does “not explicitly disclose...an invention substantially as claimed, including activation request” (emphasis added; page 6, line 25). As described above, Refai teaches a “configuration management framework” that only configures target entities and does not activate any target entities. Therefore, the suggested combination of Refai in view of Klos renders Refai unsatisfactory for its intended purpose because Refai would be modified from a “configuration management framework” that configures target entities and does not activate target entities, to a service management system that provides activation requests that activates target entities.

Appellants respectfully submit that Refai modified by Rockwell changes the principal of operation of Refai. Appellants understand the principal of operation of Refai to be a “programmable configuration management framework...” that “....makes use of a store for retrievably storing a plurality of programmable configuration requests.” Additionally, “[a] work management module...services the indentified programmable configuration requests causing a corresponding plurality of configuration commands to be issued for monitored execution to a plurality of communication network target entities” (paragraph [0019]).

Furthermore, “[u]sing the generic programmable configuration management module 306, a programmable configuration request may be created 310.” A “Programmable Change Request (PCR) is a record specifying details of a configuration management job to be performed on a large group of communications network equipment. A PCR typically specifies a list of target equipment to be configured, a configuration job, and scheduling information to perform the configuration job” (paragraph [0043]). In particular, “[h]aving specified the configuration job 408, populating the PCR 404 includes specifying PCR options 410” (paragraph [0058]).

A PCR option that provides for the principal of operation of Refai is “[i]f the end time is left unspecified then the PCR is expected to take as long as it needs to complete processing unhindered” (emphasis added; paragraph [0059]).

Another example is “...execution of the PCR may need to be performed repetitively at a frequency.” Furthermore, “[t]he operator is provided with the option to specify the frequency in populating the PCR 404” (emphasis added; paragraph [0060]). Also, “...in case errors are encountered during PCR execution (step 414). A first option enables trapping of errors when performing configuration changes on the targets. The execution of the PCR may be stopped on detecting a first error. Stopping the PCR execution...suppresses further configuration commands being sent to the next target in the list to be processed” (emphasis added; paragraph [0064]).

Appellants understand Rockwell to describe programmable controller that uses a “TON instruction to turn an output on or off after the time has been on a preset time interval. The TON instruction starts accumulating time when the rung goes true, and continues until one of the following happens:

- the accumulated value equals its preset value
- the rung goes false
- a reset instruction resets the timer
- the SFC step goes inactive
- the processor resets the accumulated value when the rung conditions go false, regardless of whether the timer timed out or not” (page 2).

Appellants agree with the instant Office Action which asserts that Refai does not disclose “receiving at time t1 a first atomic request at a first journaling

proxy, said first journaling being associated with a target element..., and said journaling proxy intentionally delaying sending said first atomic request to said target element for execution until a time t2 that satisfies a set of predefined configuration parameters for said first target element...” (page 6, paragraphs 2-3). Refai combined with Rockwell changes the principal of operation of Refai because the programmable configuration management framework would not use the PCR and PCR options to configure target elements, but instead use TON instructions to configure target elements. For example, if Refai is modified by Rockwell, then the PCR option of the PCR performing repetitively at a frequency is no longer available to perform the principal of operation. If Refai is modified by Rockwell, the PCR is no longer expected to take as long as it needs to complete processing unhindered to perform the principal of operation. If Refai is modified by Rockwell, the PCR may not be stopped on detecting a first error to perform the principal of operation. Therefore, the suggested combination of Refai and Rockwell would change the principal of operation of Refai which is a configuration management framework by way of PCR options.

Moreover, Appellants respectfully submit that the combination of Refai and Rockwell renders Refai unsatisfactory for its intended purpose. For at least the same remarks as stated above, Appellants understand the intended purpose of Refai to be a “programmable configuration management framework...” that “....makes use of a store for retrievably storing a plurality of programmable configuration requests.” The intended purpose is performed by way of the PCR and the PCR options. Refai in view of Rockwell would substitute the functionality

of the PCR and PCR options with TON instructions and therefore change the intended purpose Refai. For example, Refai in view of Rockwell would not allow the processing of the configuration to take as long as it needs because the TON instruction would not allow for a configuration to take as long as it needed. Refai in view of Rockwell would not allow the process of configuration performed repetitively at a frequency because the TON instruction would not allow for it. Refai in view of Rockwell would not allow for the execution of the configuration stopped on detecting a first error, because the TON instruction would not allow for it. Therefore, the suggested combination of Refai and Rockwell renders Refai unsatisfactory for its intended purpose because Refai would be modified from a “configuration management framework” that is controlled by a PCR and PCR options to a configuration management framework that is controlled merely by TON instructions with minimal capabilities.

Appellants respectfully submit that the combination of Refai, Klos and Rockwell does not satisfy a *prima facie* case of obviousness under 35 U.S.C. §103(a). Therefore, Appellants respectfully submit that combination of Refai, Klos and Rockwell does not render obvious the claimed embodiments of the present invention as recited in independent Claims 1, 12 and 20, that these claims overcome the rejection under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance. Appellants respectfully submit that the combination of Refai, Klos and Rockwell also does not render obvious the additional claimed features of the present invention as recited in Claims 2-11 that depend from independent Claim 1, Claims 13-19 that depend from independent

Claim 12, and Claims 21-27 that depend from independent Claim 20. Therefore, Appellants respectfully submit that Claims 2-11, 13-19 and 21-27 also overcome the rejection under 35 U.S.C. § 103(a), and are in a condition for allowance as being dependent on an allowable base claim.

Conclusion

Appellants believe that pending Claims 1-27 are patentable over the asserted art.

Accordingly, Appellants respectfully submit that the rejections of Claims 1-27 are improper and should be reversed.

The Appellants wish to encourage the Examiner or a member of the Board of Patent Appeals to telephone the Appellant's undersigned representative if it is felt that a telephone conference could expedite prosecution.

Respectfully submitted,

WAGNER BLECHER LLP

Date: 06/22/2009

/John P. Wagner, Jr./
John P. Wagner, Jr.
Registration Number: 35,398

WAGNER BLECHER LLP
Westridge Business Park
123 Westridge Drive
Watsonville, CA 95076
408-377-0500

VIII. Appendix - Clean Copy of Claims on Appeal

1. A method of activating a plurality of target elements in a computing arrangement, comprising:
 - receiving a high-level activation request pertaining to said plurality of target elements;
 - parsing said high-level activation request into a plurality of atomic requests; and
 - receiving at time t1 a first atomic request of said plurality of atomic requests at a first journaling proxy, said first journaling proxy being associated with a first target element of said plurality of target elements, said first journaling proxy intentionally delaying sending said first atomic request to said first target element for execution until a time t2 that satisfies a set of predefined configuration parameters for said first target element.
2. The method of claim 1 wherein said set of predefined configuration parameters for said first target element specifies a predefined time window within which said executing said first atomic request occurs.
3. The method of claim 1 wherein said first atomic request includes resetting said first target element to a predetermined value, said resetting only occurs after a predefined number of reset-containing requests for said first target element are accumulated by said first journaling proxy since said first target element was last reset, said resetting only occurs once at said first target element for said predefined number of reset-containing requests.
4. The method of claim 1 wherein said first atomic request includes resetting said first target element to a predetermined value, said resetting of said first target element only occurs after an expiration of a predefined time period since said first target element was last reset.

5. The method of claim 1 wherein said first atomic request includes resetting said first target element to a predetermined value, said resetting only occurs after an expiration of a predefined time period since said first atomic request is received by said first journaling proxy.

6. The method of claim 1 wherein said first atomic request includes resetting said first target element to a predetermined value, said time t2 occurs responsive to a first occurrence of one of a first event and a second event, said first event representing an accumulation of a predefined number of reset-containing requests for said first target element by said first journaling proxy, said second event representing an expiration of a predefined time period since said first atomic request is received by said first journaling proxy.

7. The method of claim 1 wherein only a subset of target devices that receive atomic requests parsed from said high-level request are associated with journaling proxies.

8. The method of claim 7 wherein each target device of said subset is associated with a different journaling proxy.

9. The method of claim 1 further comprising sending a qualified success message from said first journaling proxy to an activation engine after said first atomic request is received at said first journaling proxy, said qualified success message enabling said activation engine to consider said high-level request a provisional success in order to attend to any other pending high-level activation request.

10. The method of claim 9 wherein said qualified success message is sent only after said first journaling proxy ascertains that said first target element is capable of performing all tasks specified by said first atomic request but for at least one unsatisfied parameter in said predefined configuration parameters.

11. The method of claim 1 further comprising undoing all completed atomic tasks that have been completed pursuant to said high level activation request if said first target element is unable to complete said first atomic request when said first atomic request is executed at said first target element.

12. An arrangement for activating a target element, comprising:
an activation engine; and
a journaling proxy coupled to said activation engine and said target element, said journaling proxy being configured to receive an atomic request from said activation engine at time t1, said journaling proxy intentionally delaying sending said atomic request to said target element for execution until a time t2 that satisfies a set of predefined configuration parameters for said target element.

13. The arrangement of claim 12 wherein said set of predefined configuration parameters for said target element specifies a predefined time window within which said executing said atomic request occurs.

14. The arrangement of claim 12 wherein said atomic request includes resetting said target element to a predetermined value, said resetting only occurs after a predefined number of reset-containing requests for said target element are accumulated by said journaling proxy since said target element was last reset, said resetting only occurs once at said target element for said predefined number of reset-containing requests.

15. The arrangement of claim 12 wherein said atomic request includes resetting said target element to a predetermined value, said resetting only occurs after an expiration of a predefined time period since said target element was last reset.

16. The arrangement of claim 12 wherein said atomic request includes resetting said target element to a predetermined value, said resetting only occurs after an expiration of a predefined time period since said atomic request is received by said journaling proxy.

17. The arrangement of claim 12 wherein said atomic request includes resetting said target element to a predetermined value, said time t2 occurs responsive to a first occurrence of one of a first event and a second event, said first event representing an accumulation of a predefined number of reset-containing requests for said target element by said journaling proxy, said second event representing an expiration of a predefined time period since said atomic request is received by said journaling proxy.

18. The arrangement of claim 12 wherein said journaling proxy is configured to send a qualified success message to said activation engine after said atomic request is received at said journaling proxy, said qualified success message enabling said activation engine to consider said high-level request a provisional success in order to attend to any other pending high-level activation request.

19. The arrangement of claim 18 wherein said qualified success message is sent only after said journaling proxy ascertains that said target element is capable of performing all tasks specified by said atomic request but for at least one unsatisfied parameter in said predefined configuration parameters.

20. An article of manufacture comprising a program storage medium having computer readable code embodied therein, said computer readable code being configured to activate a target element in a computing arrangement, comprising:
computer readable code for receiving an atomic request at a journaling proxy from an activation engine; and

computer readable code for intentionally delaying execution of said atomic request by said target element until a time that satisfies a set of predefined configuration parameters for said target element.

21. The article of manufacture of claim 20 wherein said set of predefined configuration parameters for said target element specifies a predefined time window within which said executing said atomic request occurs.

22. The article of manufacture of claim 20 wherein said atomic request includes resetting said target element to a predetermined value, said computer readable code for said intentionally delaying includes computer readable code for permitting resetting of said target element only after a predefined number of reset-containing requests for said target element are received said journaling proxy since said target element was last reset, said resetting only occurs once at said target element for said predefined number of reset-containing requests.

23. The article of manufacture of claim 20 wherein said atomic request includes resetting said target element to a predetermined value, said computer readable code for said intentionally delaying includes computer readable code for permitting resetting of said target element only after an expiration of a predefined time period since said target element was last reset.

24. The article of manufacture of claim 20 wherein said atomic request includes resetting said target element to a predetermined value, said computer readable code for said intentionally delaying includes computer readable code for permitting resetting of said target element only after an expiration of a predefined time period since said atomic request was received by said journaling proxy.

25. The article of manufacture of claim 20 further comprising computer readable code for sending a qualified success message from said journaling proxy to said activation engine after said atomic request is received at said

journaling proxy, said qualified success message enabling said activation engine to consider a high-level request that contains said atomic request a provisional success in order to attend to any other pending high-level activation request.

26. The article of manufacture of claim 25 wherein said qualified success message is sent only after said journaling proxy ascertains that said target element is capable of performing all tasks specified by said atomic request but for at least one unsatisfied parameter in said predefined configuration parameters.

27. The article of manufacture of claim 20 further comprising undoing all completed atomic tasks that have been completed pursuant to said high level activation request if said target element is unable to complete said atomic request when said atomic request is executed at said target element.

IX. Evidence Appendix

No evidence is herein appended.

X. Related Proceedings Appendix

No related proceedings.